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File No. O Money Lenders 157
Legal Department
A BRANCH

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Subject:—

P 286 F — Opinions under the Bombay Money Lenders Act 1946

C O N T E N T S

Legal Department File No.O.Money Lenders/1951.

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Office of the R.L.A.

Bombay Money Lenders Act. 1946-sec.31.A.

Remarks The interest to be calculated under section 31A of the Bombay Money Lenders Act, 1946 would be all interest for the period from the date of advance to the first day of the month in which the statement is delivered, passbook supplied or tender made, plus the interest for a fortnight or a month according as the statement is delivered passbook supplied or tender made on any day in the first fortnight of the month or any day thereafter

Sd/ P.M. Lad.
Remembrancer of Legal Affairs.

U.R. to D.D.No.46 dated the 2nd January 1951.

EKN.26/6/

Legal Department.

The question raised for the R.L.A's consideration is: whether an oral demand by a money-lender from his debtor for interest at a rate exceeding the maximum rate prescribed by Government would be an offence under section 34 read with section 25(3) of the Bombay Money Lenders Act, 1946. Section 25(3) of the Bombay Money-lenders Act, 1946, provides that "if any money-lender charges or receives from a debtor interest at a rate exceeding the maximum rate fixed by the Provincial Government under sub-section (1) he shall, for the pruposes of section 34 bedeemed to have contravened the provisions of this Act." As observed by the Secretary. Development Department, the word "charges" is to be distinguished from the word "receives" in section 25(3). "Charge" as a technical word of legal use conveys the meaning of obligation; the distinctive significance of the term rests in the idea of obligatiln directly bearing upon the individual thing or person to be affected and binding it or him to discharge the duty or satisfy the claim imposed. (See Balentine's Law Dictionary: p.207). An oral demand of interest exceeding the maximum rate would not create a liability in the sense that the debtor would be called upon to meet it, for under section 19 "every money-lender is required to deliver a statement of accounts and copies thereof to his debtor and such statement shall show the amount of principal, andthe amount of interest separately due to the money-lender." It is only this statement which creates ademand which a debtor is required to meet. Under section 30 debtor is given the right to make an application to the Court for taking accounts and declaring the amount due and under section 31 at is open to him to tender any

sum.....

sum of money due from him to his money-lender in respect of the loan by way of principal and interest or both and if the money-lender refuses to accept any sum so tendered the debtor may deposit the said sum in court to the accountof the money-lender. Reading section 19 with the safe-guards provides under sections 30 and 31, it appears that it is only when a statement is given to the debtor he is fixed with the liability to pay the interest demanded in such statement. In the circumstances, it appears that a mere oral demand for interest at a rate exceeding the maximum rate fixed by Government can not be construed as charging such interest by the money lender within the meaning of section 25(3) of the Act and will not amount to an offence.

Sd/

Additional Secretary to Government.

U.R. to D.D.No.4041, dated the 12th March 1951.

EKN.26/6/

L.D.R.I.No.6012 dt/27-3-51.

Submitted with reference to the note of the D.D. at p. 1 ante.

The previous opinion of the R.L.A.No.46 dated 2-1-1951, in O.Money Lenders/51 is slip marked "A" out of which the present reference has arisen which requires clarification of the words therein reading as:-

"From the date of advance to the First day of the month in which the statement is delivered etc." The point for decision is how the interest is to be calculated under sec. 31A of the Bombay Money Lenders Act, 1946, in terms of the R.L.A's opinion No.46, dated 2.1.1951 whether the words "First day of the month" occurring therein should be "Last day of the month". This would not be correct in view of what fallows these words. The words "First day of the month" have been correctly and properly used in the opinion referred to in view of what follows these words but the Registrar General of Money-Lenders Bombay State, Poona may be informed that the interest "for the first day" is to be excluded.

The reply may be that the view taken by the Registrar General of Money Lenders is not correct, but the presumption made by the D.D. is correct.

Sd/

D.S.(Civil) Reply may be:--

The presumption made by D.D. in its office note at p02 ante is correct.

Sd/ RTK.

Sd/
Additional Secretary

EKN.26/6/

Legal Department.

In his last Opinion No.69-Confl. dated the 7th February 1948, the R;L.A. opined that "In order to establish that a person is carrying on the money-lending business it is not sufficient to prove that he occasionally lends money at a remunerative rate of interest; it is necessary to prove some degree of system and continuity in his money-lending transactions". That opinion still holds good and there is no reason to reconsider it. The decision of the Joint Civil Judge, Chiplun & Dapoli and Khed, in Regular Civil Suit No.428 of 1949, does not specifically state that even the person who does occasionally money-lending business should take out a licence under the Bombay Money -lenders Act,1946. In that shit the plaintiff stated in the plaint that she was not a money-lender and that the loan she made to the defendant was her solitary transaction. But the Civil Judge did not accept that statement of the plaintiff as her husband did not say a word about it in his deposition As the judge disbelieved her statement he came to the conclusion that she was not merely an occasional money-lender a subsequently required a licence under the Act.

3. The Registrar or Money-lenders, Poona District, in his letter dated 13-9-1950 has stated that certain applicants have applied for licences under the Act even though they appear to be occasional money lenders and in view of this fact he wants to know whether he should advise these applicants that it is not necessary for them to take out lisences under the Act. Under section 6(1) of the Bombay Money-lenders Act,1946."Every money-lender shall annually before such date as may be prescribe make an application in the prescribed form for the grant of a licence to the Assistant Registrar of the Area within the limits of which, the place where he intends to carry the business of money-lending or if he intends to carry on business at more than oneplace in the area, the principal place of

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such business, is situated." It is clear from this provision that whoever intends to do business of money lending has to apply for a licence under the Act and it does not appear to be the province of the licensing authority to decide whether the licence should or shouldnot be granted to him, merely because he thinks that he is not doing such business, especially as that opinion of thelicensing authority would not be binding on the court in a suit filed for the recovery of the loan made by the applicant. Under section 8(1) the grant of a licence can be refused under certain circumstances. This is not one of the grounds on which the licence can berefused. It follows, therefore, that thelicensing authority shall have to issue licences to all the applicants unless there exists any objection as specified in section 8(1). It is open to a person to takeout a licence under the Bombay Money-lenders Act,1946, and yet not actually do money-lending business. As stated above occasional money-lending does not require a licence under the Act. All that thelicensing authority should do is to see that such occasional money-lenders are not prosecuted for failing to take out a licence under the Act.

Sd/

Additional Secretary to Government.

U.R. to D.D.No.10252,dated the 28th June 1951;

BKN.26/6/

OFFICE OF THE R.L.A.

Section 18 sub-section (1) of the Bombay Money Lenders Act, 1946 provides: that every money-lender shall keep and maintain a cash-book and a ledger in such form and in such manner as may be prescribed. This provision being mandatory, every money-lender is bound to keep and ~~maintain~~ maintain a cash-book and a ledger in the form prescribed by Government. Rule 10 of the Bombay Money-lenders Rules, provides that the cash book and ledger to be maintained under sub-section (1) of section 18 shall be either in forms Nos.4 and 5 or in forms Nos.4-A and 5-A respectively. Form 4-A relates to cash-book andform 5-A to the ledger. For 4-A provides for the insertion of opening balance and closing balance etc. ~~While~~ form 5.A provides for details of the debt, the conditions thereof to be mentioned as well as the principal amount paid and recovered and the interest debited and recovered during the year. It is clear from these forms that no entries can be made either in form4-A or in form 5-A relating to items of expenditure like, godown rent, sales tax, cartage etc. Consequently, the accounts which the members of the Shahpapuri Merchants Association, Kolhapur, maintain would not be in conformity with forms 4-A and as stated above section 18(1)of the Bombay Money-Lenders Act being mandatory, any departure from the forms prescribed thereunder in respect of cash-book and ledger, would not be permissible. The members of the Shahpuri Merchants Association, Kolhapur will therefore have to maintain accounts in forms 4-A and 5-A prescribed under rule 10 of the Bombay Money-lenders Rules. If, however, the Registrar considers that the accounts maintained by them under rule 89 of the Bombay Agricultural produce markets rules would safeguard the interest of the debtors, a provision may be made in the rules giving the Registrar power to sanction forms different

from.....

from Forms 4-A and 5-A in such or other suitable cases. Till that is done the merchants will have to maintain accounts in forms 4-A and 5-A-

Sd/ J.R.D.

Remembrancer of Legal Affairs.

U.R. to Developement Deptt. No.9695, dated the 20th June 1951.

EKN.26/6/

L.B.R.I.No.12480/51

13-6-1952.

Submitted w.r. to D.D. note at p. 1-2 Sec.35 of the Bombay Public Trusts Act,1950 provides that where the trust property consists of money and cannot be applied immediately or at any early, date to the purp oses of the public trust, the trustee shall be bound (subject to any direction contained in the instrument of the trust) to invest the money in public securities. Under proviso 2 to that section the Charity Commr. may by general or special order permit the trustees of any public trust or classes of such kxx trust to invest the money in any other manner. It is, there-fore, anticiapted that the licensing authority under the Bombay Money-lenders Act, 1946 may, in future, have to deal with applications from public trusts for licence under the B.M.L. Act .A.S.,D.D. considers that the point is governed by Sec.2(9)(b) of the B.M.L. Act, 1946.

2- The question raised for R.L.A's considerations is whether a licence is necessary under the B.M.L. Act, 1946 for advancting loans under the B.P.T. Act, 1950-

The view taken by D.D. is correct. (See R.L.A's opinion No.1719 dated 20-2-1948 a copy of which is appended).

Sd/.R.K. 21/7/

Additional Secretary Sd/

U;R. to B.D.No.11979, dt-28-7-1951.

EKN.26/6/

Office of the R.L.A.

It appears that some money lenders in Vadgaon Mahal of Banak Kantha District which is bounded by Sidhpur, Patan and Mehsana talukas of the Mehsana District have for several years been carrying on the business of money-lending in these talukas and the question has been raised whether these money-lenders can legally continue to carry on the business without obtaining separate licences for these areas- The Registrar General of Money-lenders in his letter to the Secretary, Development Department, observes.

> "The question for consideration is whether in such cases it would be competent for a money-lender to advance loan to debtors residing in a place outside the area for which he has been granted a licence. According to section 5 of the Bombay Money-lenders Act, a money-lender is competent to carry on the business of money-lending in an area for which he holds a valid licence. The area presumably has to definite relation to the residence of the debtors and though provision is made for grant of licences for subsidiary places as distinguished from the principal place of money-lending, the scheme of the Act does not appear to preclude from the sphere of operation of the money-lender loan transfactions with debtors residing outside the area for which he is granted a licence so long as these transactions take place in the area for which the licence is granted."

The Secretary, Development Department, appears to agree with the view taken by the Registrar General of Money-lender The R.L.A. is requested to advise.

Section 5 of the Bombay Money-Lenders Act,1946, provides that no money-lender shall carry on the business of money-lending except in the area for which he has been granted a licence and except in accordance with the terms and conditions of such licence. Section 6(1) of the Bombay Money Lendgers Act,1947 provides that every moneo-lender has to make an application to the Assistant Registrar of the area within the limits of which the place where he intends to carry on the business of money-lending, is situated. The expression 'carriers on business' is intended to relate to the place in which the applicant carries on the transactions and is liable to be used. (Cf. Goswami v.Govardhanlalji I.L.R. 14 Bom.541).It has nothing to do with the residence of his debtors. The view taken by the Secretary ,Development Department is correct.

EKN.26/6/ Sd/J.R.D.
Reference No. of Legal Affairs.
U.R. to D.D.No.12058 dated 27th July 1951.

It appears that one Shri Patel had taken a licence under the Bombay Money-lenders Act,1946, and advanced money to some debtors on the security of mortgage or property. He has now ceased doing the money-lending business. He wants to know whether it is necessary to renew the licence. The Registrar General of Money-lenders, State of Bombay, considers thatit is not necessary that Shri Patel should renew the licence if he does not wish to enter into fresh transactions but heis not absolved from the obligations to maintain and furnish accounts under sections 18 and 19 in respect of transactions entered into by him when he held a valid licence, and this kind of obligations persits not only in cases where a money-lender has refrained from renewing his licence but also it cases where his licence is cancelled under the provisions of section 8A,12 or 14- R.L.A. is requested to advise whether the view taken by the Registrar General of Money-lenders is correct.

2. The view taken by the Registrar ~~General~~ General of Money-lenders is correct. Section 5 provides that no money-lender shall carry on the business of money-lending except in the area for which he has been granted a licence and except in accordance with the terms and conditions of such licence."Business of money-lending" has been defined in section 2(2) as the business of advancing loans whether or not in connection with or in addition ~~xhxxxxx~~ to any other business. Therefore, if a person discontinues the business of advancing loans, he need not renew his licence. Nor is he required to renew his licence in order to enable him to recover the loans which he had advanced during the period for which he held the licence. That is clear from section

10(1), which reads as follows:-

> "after the expiry of six months from the date on which this Act comes into force, no Court shall pass a decree in favour of a money-lender in any suit filed by a money-lender to which this Act applies unless the Court is satisfied that at the time when the loan or any part thereof to which the suit relates was advanced, the money-lender held a valid licence."

It will thus be seen that to enable a money-lender to recover his loan through Court, all that he is required to do is to satisfy the Court that at the time when he advanced the loan or any part thereof the held a valid licence. However, even after such a person has stopped advancing loans and, therefore, ceased renewing his licence, he shall continue to be under the obligations imposed by sections 18 and 19 in regard to loan transactions made by him during the period for which he held the licence. For these are obligations which attach to money-lending transactions and which cease only when the amount advanced together with interest has been completely discharged. There are no limiting words in section 18 and 19 which may show that these obligations continue only during the period for which a licence is held. The position in this regard is placed beyond all doubt by section 21(a) which says that in any suit to which the Act applies (i.e. a suit for the recovery of a loan made after the date on which the Act came into force See Sec.2(17) the Court shall before deciding the claim on merits, frame and decide the issue, whether the money-lender has complied with the provisions of section 18 and 19. Under clause (b) of that section, if the court finds that the provisions of section 18 or 19 have not been complied with by the money-lender, it may disallow the whole or part of the interst and costs. Having regard to section 21(a), obligations imposed by section 18 or 19 continue not only in cases where licence is not renewed owing to the discontinuance of money lending business, but also apply in cases where no licence has been taken out at all by a money lender. The Registrar-General is correct in holding that these

obligations will persist also where the licence is cancelled or suspended under section 8A or 12 or 14.

Sd/J.R.D.

Remembrancer of Legal Affairs.

U.R. to D.D.No.10918, dated the 11th July 1951.

EKN.26/6/

Office of the R.L.A.

The following two questions have been reffered to the R.L.A. for his opinion:-

1) Whether a post-dated cheque is a negotiable instrument as defined in the Negotiable Instruments Act,1881; and

2) Whether the interest which will accrue after a specified period can be legally deducted from the amount of principal at the time of advancing loans.

Section 2(9) of the Bombay Money Lenders Act,1946, runs as under.

> "Loan" means an advance at interest by way of credit, whether of money or in kind but does not include:-
>
> (f) an advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act,1881, other than a promissory note.

Section 5 of the Negotiable Instruments Act,1881, runs as follows:-

> "A 'Bill of exchange' is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to or to the order of a certain person or to the bearer of the instrument."

Section 6: A cheque is a bill of exchange drawn on a specified Banker andnot expressed to be payable otherwise than on demand.

At page 43 of the negoitable Instruments Act,1899, by Bhashyam and Adgia (Edition 1944) it is stated;

"The sum payable may be certain within the meaning of sections 4 and 5 although it includes future interest. In the amount of post-dated cheque, it will be seen that future interestis included. A cheque does not lose its character of being a negotiable insrument by the mere fact that it has been post-dated. For thefacility of commerce and trade, the postedated cheques have been recognised.

(a) Sometimos a cheque is post-dated so that it may be paid on a future day named, though it may be negotiated before hand. Vide 6 Bom.L.R.699.

(b) A post-dated cheque may betreated as a bill payable at a future time, it becomes on the date it bears a bill payable on demand and hence a cheque. Vide (1942) Cal.562.

(c) The mere fact that the date of paymant of a cheque is postponed to a future date, does not make the cheque payable otherwise than on demand andis admissible in evidence if stamped as a cheque Vide,(1934) All. 695.

(d).....

(d) In point of law it makes no difference between the parties whether a cheque is ante-dated or post-dated Vide 52 Cal.677.

(e) A post-dated cheque is not by it self so irregular as to preclude a bona fide purchaser of the instrument from being a holder in due course Vide 52 Cal.677.

It follows therefore that a post-dated cheque would not cease to be a negotiable instrument under the Negotiable Instrument Act,1881. An advance made on the basis of a post-dated cheque is covered by section 2(9) F of the Money-Lenders Act,1946 and there is nothing illegal about it if the amount givey on its face includes future interest.

Sd/ J.R.D.

Remembrancer of Legal Affairs.

U.R. to D.D.No.14651, dated tthe 15th September 1951.

EKN.25/6/

Legal Department.

The question raised for the R.L.A's consideration appears to be whether section 25 of the Bombay Money-lenders Act,1946, will apply to casual money-lenders.

Section 25 of the Bombay Money-lenders Act,1946 empowers Government to prescribe limitation on rates of interest chargeable by a money-lender to his debtor on loans. Sub-section (3) of that section provides that if any money-lender charges or receives from a debtor interest at a rate exceeding the maximum rate fixed by the State Government under sub-section(1), he shall for the purposes of section 34 be deemed to have contravened the provisions of this Act. A casual money-lender is not a money-lender within the meaning of section 2(10). If so, section 25 will have no application to a casual money lender. For the same reasons, sections 18 and 19 also will have no application to a casual money-lender.

Sd/

Additional Secretary to Government.

U.R. to D.D., No.15000, dated the 20th September 1951.

EKN.27/6/

Legal Department.

R.I.No.39-P-Confl.dated 15-9-51.

Submitted with reference to the note of the Development Department at page 9 ante.

The question referred to the R.L.A. whether it is legally necessary for the Registrar or the Assistant Registrar or any other office authorised, to give a written notice before exercising his powers under section 13A of the Act. The Money-lender under section 13A of the Act can at any time be asked to produce any record or document in his possession. The question of reasonable notice arises only when these officers want to enter any premises for the inspection and verification of any such record or document. The words used in the section are as follows:-

"The Registrar, the Assistant Registrar or officer so authorised may after reasonable notice at any reasonable time enter any premi-ses, where he believes such record or document to be and may ask any question necessary for interpreting or verifying such record."

EKN.27/6/

Legal Department.

What is reasonable notice under section 13A of the Bombay Money Lenders Act is entirely a question of fact which has to be decided according to the particular facts of each case.

Sd/

Additional Secretary to Government.

U.R. to D.D.No.853-Confl, dated the 8th October 1951.

EKN.28/6/

Legal Department.

As explained by the Additional Secretary to Government, Legal Department, what is reasonable notice under section 13A of the Bombay Money-lenders Act is entirely a question of fact which has to be decided according to the particular facts of each case. The Secretary, D.D. now inquires whether in view of the above opinion, "B" of the Registrar General of Money-lenders at p-27/C is quite unobjectionable. The portion at "B" reads:

> "it would, however, be generally sufficient if for the purposes of enforcing the provisions of this section, the officer gives the notice preferably in writing to the money-lender on the spot."

Section 13A does not require that the notice need be in writing. Presumably, the Secretary, D.D. wants opion with regard to the correctness of the portion at "A" of the instructions issued by the Registrar-General to the effect that "it would be sufficient if a notice is served on the spot and the premises wvisited immediately thereafter." That will not be quite in consonance with the language and intention of the provision. Reasonable notice must be afforded before the premises are entered into. What will be "reasonable notice", as has been explained already, depends entirely upon the circumstances of each case. What may be "reasonable notice" in one case will not necessarily be a "reasonable notice" in another case. It is for the officer, as a person of ordinary common sense, to decide before entering on the premises what would be reasonable notice in each case.

Sd/

Additional Secretary to Governmen

U.R. to D.D.No.871-Confl, dated the 17th October 1951.

EKN.27/6/

Office of the R.L.A.

Money Lenders Act,1946- Read with Guardian and Wards Act, 1890.

It appears that Hanmantram to-whom a licence under the Bombay Money Lenders Act,1946, was issued as guardian of his minor son died in 1950. His Widow's name cannot be substituted in the licence as before a licence is granted the suitability of the person concerned has got to be decided. Moreover there is no provision in the Bombay Money Lenders Act for substitution of such name in the licence. Consequently a fresh licence would be necessary if the widow of Hanmantram ~~it~~ is to carry on money lending business on behalf of her minor son.

2. It is true that the widow of Hanmantram is a ~~xxxx~~ natural guardian of her minor son and as such she has to manage the property of her minor son in accordance with the principles stated in section 27 of the Guardian and Wards Act; but what is necessary is to safeguard the interest of the minor in the management of the property and those safeguards are provided in the Guardian and Wards Act. Chapter III of that Act requires the guardian to manage the property under the supervision of the Court. There is nothing in Hindu Law to prohibit an appointment of a natural guardian for a minor under the Guardian and Wards Act, in respect of the separate property of such minor.(See Mulla's Hindu Law page 598). It would, therefore, be proper to issue a licence under the Bombay Money Lenders Act to such guardian of the property of the minor as has been appointed under the Guardian and wards Act even though the guardian happens to be a natural guardian.

Sd/ J-R.D.

Remembrancer of Legal Affairs.

U.R. to D.D.No.16001, dated the 8th October 1951.

EKN.27/6/

Office of the R.L.A.

It appears from the scheme of chit funds as stated by the Registrar General of Money Lenders in his letter dated 3-10-1951 that the view taken by the Secretary, Development Department, that the Bombay Money Lenders Act does not apply to Chit Fund is correct.

Sd/ J.R.D.

Remembrancer of Legal Affairs.

U.R. to D.D.No.19899,dated the 11th December 1951.

Office of the R.L.A.

The question for consideration in this case is whether Messrs.Govindram Ghamshamdas & Co. can be held to be carrying on money-lending business within the meaning of the Bombay Money Lenders Act,1947. It is stated that the Company has been advancing loans to film producers on hundis. A film producer is both a trader as well as a manufacturer and a loan to him would not be a loan within the meaning of section 2(9) of the Bombay Money Lenders Act,1947. So also it is stated that loans are advanced on hundis. A hundi is a bill of exchange and not a promissory note. A loan advanced on hundis would not be a loan within the meaning of the Act. The contention urged by the Registrar General of Money Lenders that Messrs. Govindram Ghanshamdas & Co. are money-lenders within the meaning of the Bombay Money Lenders Act,1947, is not correct and has no substance.

Sd/J.R.D.

Remembrancer of Legal Affairs.

U.R. to D.D.No.1055-Confl,dated the 19th December 1951.

EKN.27/6/

Office of the R.L.A.

The view taken by the Secretary D.D. is correct.

The provisions of rule 15 of the Bombay Agricultural Debtors Relief Rules 1947 made with reference to sec.54 of the B.A.D.R.Act,1947 cannot be utilized for controlling the amount of advances to be given by a landlord to a tenant under sec.2(9)(g)(iii) of the Bombay Money-lenders Act,1946. The two provisions are mutually exclusive. The object of the Bombay Money-lenders Act is to regulate the transaction of money-lending in the State of Bombay by providing inter alia that no money lender shall carry on the business of money lending except under a licence. By sec.2(9)(g)(iii) of the Act a landlord lending money to the tenants for financing of crops to the extent specified therein is exempted from obtaining a licence. The statutory limit of Rs.50/- per acre provided by sec.2(9)(g)(iii) cannot be controlled or restricted by or under the provisions of rule 15 of the Bombay Agricultural Debtors Relief Rules, 1947- The said provisions of sec.2(9)(g)(iii) of the Bombay Money-lenders Act are dependent upon the Bombay Agricultural Debtors Relief Act only in so far as they define certain expressions occurring therein in terms of the definitions given in the latter Act. The provisions of sec.54 of the Bombay Agricultural Debtors Relief Act read with rule 15 of the Bombay Agricultural Debtors Relief Rules, 1947 would apply to all persons (not necessarily landlords) in respect of loans to all agricultural debtors (not necessarily tenants). Where such money-lender is a landlord and the debtor is his tenant, the case will be governed with the limits of Rs.50 per acre by the Bombay Money-lenders Act.

Sd/-J.R.D.

Remembrancer of Legal Affairs.

U.R . to D.D.No.19794, dated the 19th December 1951.

EKN.27/6/